

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-20487-CR-MORENO

UNITED STATES OF AMERICA,

-vs-

VIKTOR TSIMBAL,

Defendant.

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JOINT FACTUAL STATEMENT

From approximately April 1, 1998, through May 2000, the defendant, Viktor Tsimbal, was engaged in criminal activity related to Beluga Caviar, Inc., (“Beluga Caviar”) a Florida corporation, with headquarters at 1909 NE 168th Street, North Miami Beach, Florida, 33162. Tsimbal was the President and Owner of Beluga Caviar.

Tsimbal purchased sturgeon caviar from foreign and domestic suppliers. The defendant was aware that sturgeon are threatened and highly regulated in Russia and in the United States, but he nevertheless engaged in a conspiracy to smuggle black market caviar into the United States as set forth below. Defendant Tsimbal imported large quantities of caviar in shipments declared to the U.S. Fish & Wildlife Service and the U.S. Customs Service as required, but these shipments also contained false documents and thus were imported contrary to law and in violation of 18 U.S.C. Section 545. Tsimbal also engaged in more covert forms of smuggling by: (1) directing a ring of couriers who smuggled the caviar in unrefrigerated suitcases through Miami International Airport; (2) purchasing and receiving caviar smuggled through the Miami airport by couriers sent by suppliers in Poland; and (3) buying caviar smuggled into the United States by others. Tsimbal sold caviar to wholesale and retail customers including other caviar wholesalers in South Florida and throughout the United States. The defendant also advertised on a custom built web-page which generated retail customers over the internet.

Protected Status of Sturgeon and Caviar

As set forth in the Indictment, the sturgeon is a species of prehistoric origin that can live up to 100 years and typically reaches sexual maturity only after approximately six to twenty years, depending on the species. Only then does the female bear the eggs known as roe that are harvested to make caviar. Due to the time necessary to reach egg bearing age and because the fish is killed in the process of obtaining the roe which is salted to make caviar, sturgeon are especially vulnerable. Traditional caviar comes only from the Caspian Sea and its tributaries which fall within the borders of Russia, Kazakstan, Azerbaijan, Turkmenistan and Iran. Beluga, Osetra and Sevruga caviar are the three most

common commercially available types of Caspian Sea caviar, and are taken from Beluga, Russian and Stellate sturgeons, respectively. Based upon scarcity, Beluga caviar is the most expensive, Osetra the next most expensive, and Sevruga is the least expensive Caspian Sea sturgeon caviar.

In 1998, the protection accorded these species was greatly enhanced in accordance with an international treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). As of April 1, 1998, all species of sturgeon order *Acipenseriformes*, not previously listed as Appendix I or Appendix II, which includes all Caspian Sea sturgeon species, were listed in Appendix II of CITES and in the federal regulations promulgated by the U.S. Fish & Wildlife Service. Prior to importing caviar into the United States from a foreign country, a valid foreign export permit issued by the country of origin or a valid foreign re-export certificate issued by the country of re-export must first be obtained. The Endangered Species Act ("ESA") makes it unlawful for any person subject to United States jurisdiction to engage in trade or to possess any specimens traded contrary to the provisions of CITES. 16 U.S.C. §§ 1538(c)(1) & 1540(b)(1). Viktor Tsimbal was personally aware of the new requirements imposed by CITES as of April 1, 1998.

A major threat to the survival of the sturgeon is illegal fishing resulting from the demand for caviar on the international market and non-compliance with the requirements of CITES. Accurate species declarations within the CITES permit scheme are essential in monitoring sturgeon harvest statistics, used to ensure species survival and in the management of a viable and sustainable commercial use of wild sturgeon.

Operation Southern Comfort

Using the code name, Operation Southern Comfort, U.S. Fish & Wildlife Service agents asked a confidential source to visit Beluga Caviar on May 2, 2000. During the visit to Beluga Caviar the confidential source was offered caviar at less than market value in tins bearing false labels claiming the contents to be "Atlantic Lumpfish." Lumpfish is an unprotected species. The tins held high quality sturgeon caviar, a fact confirmed by DNA analysis performed by the Fish & Wildlife Service's National Forensics Laboratory in Ashland, Oregon. Similar labels were being used by caviar smugglers who used paid couriers to smuggle caviar into the United States in luggage. The confidential source was shown photographs of caviar seized from couriers that had been apprehended at Miami International Airport and he stated that it matched the tins in the refrigerators at Beluga Caviar. A search warrant was executed at Beluga Caviar on May 18, 2000, at which time business records and 895 one-half kilogram tins of sturgeon caviar worth approximately \$550,000 were seized by the U.S. Fish & Wildlife Service. In pleading guilty, the defendant is giving up all right, title and interest in this caviar.

Smuggling Conspiracy

Using his company, Beluga Caviar, Tsimbal knowingly directed and participated in a conspiracy to smuggle sturgeon caviar into the United States in violation of the laws of the United States, including the laws protecting threatened species of wildlife, prohibiting smuggling and money

laundering. As set forth in the Indictment, Tsimbal paid at least three full time smugglers to illegally bring black market sturgeon caviar into the United States in suitcases and luggage, without CITES certificates and without declaration to the U. S. Customs Service and U.S. Fish & Wildlife Service. The couriers were paid approximately \$500 each time they illegally smuggled caviar into the United States. They would typically carry approximately 50 to 75 tins of sturgeon caviar weighing 500 grams (½ kilo or 1.1 pounds) each time. Each tin had an approximate retail value of at least \$648.25.^{1/} Taking into account the fluctuation of the number of tins, the number of trips alleged in the indictment and other variables, the readily provable retail market value of sturgeon caviar smuggled into the United States alleged in the Indictment was at least \$800,000, and less than approximately \$1.5 million.

As part of the conspiracy, Tsimbal made travel arrangements, including hotel accommodations and purchasing airline tickets, for the couriers who smuggled caviar into the United States in unrefrigerated luggage. One of the co-conspirators shared an organizational role in obtaining the caviar and supplying it to the couriers in Poland. He provided the couriers with access to an apartment in Warsaw, Poland, that was leased to Tsimbal. Couriers stayed at the apartment in Warsaw where they were met by one of Tsimbal's associates, given pre-packed luggage filled with caviar and taken to the airport. Once they arrived in Miami, the couriers took a taxi or limousine to Beluga Caviar where Tsimbal or his employees would unpack the caviar and pay the courier. All of those employed at Beluga Caviar were necessarily aware of the conspiracy and participated in it by helping to make travel and hotel arrangements, unpacking the caviar, cashing checks for cash to pay the couriers, and selling the smuggled caviar.

Arkadiusz Rostkowski, also known as Eric Rostkowski, was one of the couriers used by Tsimbal and Beluga Caviar. Rostowski played an organizing role in the conspiracy in Europe. Rostowski provided access to the apartment in Poland and supplied other couriers with the caviar packed in suitcases. Rostowski was arrested on November 22, 1999, after he arrived at John F. Kennedy International Airport with 93.7 pounds of undeclared Russian caviar in his luggage. In his possession was Tsimbal's business card and contact phone numbers, frequent flier numbers for other couriers, itineraries for himself and other couriers, and a lease for the Warsaw apartment in Tsimbal's name. Tsimbal paid this co-conspirator's legal expenses after his arrest which resulted in a guilty plea. Tsimbal also purchased smuggled caviar in the United States from other smugglers and from foreign sources.

^{1/}The approximate retail value of \$648.25 per 500 gram tin is based on an average of the advertised price for Osetra, from twelve caviar suppliers (competitors to Beluga Caviar), listed on an inter-net link found on Beluga Caviar's web-page. The comparisons to advertised prices of its competitors were meant to highlight its lower than market price, made possible by illegal smuggling. Beluga Caviar undersold the market by offering 500 gram tins of Osetra caviar for prices ranging from approximately \$410 to \$489; the advertised price range of other suppliers was between \$525 and \$823 per tin, with the average being \$648.25.

Defendant's primary supplier of sturgeon caviar was a group of individuals doing business as Munnix Ltd. ("Munnix") in Poland. Tsimbal knew that this was the same company and group of individuals which had supplied Eugene Koczuk, prior to Koczuk's arrest and conviction for smuggling caviar into New York in 1999. Tsimbal knew that the individuals associated with Munnix were involved in smuggling caviar illegally smuggled out of Russia and money laundering. Tsimbal received two types of shipments from Munnix: (1) large volumes of caviar shipped in containers and declared to the U.S. Customs Service and the U.S. Fish & Wildlife Service; and (2) caviar smuggled into the United States by individual couriers arranged by those associated with Munnix. Despite the fact that the first category of shipments was declared to the authorities, the defendant was aware that the paperwork presented to the U.S. Customs Service and the U.S. Fish & Wildlife Service was false, and thus the caviar was smuggled, in at least two pertinent respects:

- ! **False Documents:** The shipments were accompanied by a Certificate of Origin "Form A" supplied by Munnix and a Health Certificate which falsely stated that the caviar was consigned from the A.O.O.T. Russkaya Ikra or Joint-Stock Company Russkaya Ikra, a caviar company in Astrakhan, Russia, and shipped to Beluga Caviar in Miami, via Munnix, Ltd. in Poland. Tsimbal never purchased caviar from this supplier in Russia as was suggested on the import documents.

- ! **Double Invoices:** The declared shipments were accompanied by false invoices supplied by Munnix which deliberately understated the actual value and sale price of the caviar. These false values were then repeated by the defendant on his Customs import declaration (Form 7501). Separate invoices ("double invoices") were then provided to Tsimbal which had the actual purchase cost of the caviar. The false invoices presented to Customs and the Fish & Wildlife Service claimed that the caviar was being imported at a cost as low as approximately \$130 per kilo for Beluga. However, the actual wholesale purchase cost contained on the double invoices was approximately \$400 per kilo. Tsimbal was told by his suppliers that one purpose of using false values was to cheat on Polish export duties. Depending on the country of export, it could also effect import duties owed in the United States.

In 1999 alone, Tsimbal imported a total of approximately 22,700 lbs of caviar in declared shipments with false paperwork as set forth above. Of this total, approximately 11,622 lbs was Beluga caviar. This amount of Beluga caviar was more than the entire Russian export quota for the year.

As part of the defendant's agreement with Munnix he agreed to receive, accept and sell other caviar shipments sent with couriers in unrefrigerated suitcases. The defendant estimates that at least 10 percent of the total amount obtained from Munnix was sent by courier and without declaration to United States Customs and without CITES certificates.

After the arrest of Koczuk in New York and the arrest of couriers caught smuggling caviar through various airports in the United States, including Miami International Airport, Munnix and the

individuals associated with Munnix devised a new scheme to smuggle black market caviar into the United States. They began using paste-on labels on the 500 gram tins carried by the couriers falsely claiming the contents to be “Atlantic Lumpfish.” Caviar smugglers were apprehended at the Miami airport with such labels in early 2000. The scheme was contained in an email addressed to Tsimbal from individuals at Munnix dated April 27, 2000, which displayed four false lumpfish labels that were already being used to smuggle sturgeon caviar. This e-mail was found on a computer seized at Beluga Caviar during the search warrant executed by federal agents.

As set forth in Overt Acts 68 and 69, in April and May 2000, Tsimbal and his company purchased falsely labeled caviar (137 tins of approximately 500 grams each) with a retail market value of approximately \$88,810. The tins used the same false labels as depicted in the e-mail Tsimbal had received from Munnix, although they were purchased from a caviar company in Miami with invoices claiming the contents to be Beluga and Osetra caviar. Tsimbal knew that the purpose of the false labels was to conceal the smuggling of sturgeon, a protected species of wildlife. Employees at Beluga caviar would wash off the false past-on lumpfish labels before selling the caviar.

Money Laundering

As part of his criminal conduct, the defendant deposited the proceeds of the wildlife smuggling conspiracy into foreign banks, including accounts in Warsaw, Poland maintained in his own name, as well as the names of couriers and co-conspirators. Tsimbal and his co-conspirators exercised control over these accounts and used them to conceal smuggling proceeds and to fund future smuggling endeavors. Tsimbal transferred funds from Beluga Caviar’s bank account in Miami to at least four foreign bank accounts over which he exercised control.

Tsimbal also deposited funds in foreign accounts to pay for caviar imported into the United States and had his customers do the same. For example, when selling sturgeon caviar to other caviar dealers in the United States, Tsimbal would direct payments to various foreign bank accounts in his name, in other account names but over which he exercised control, and into the accounts of his suppliers. Upon the request of a purchaser, Tsimbal would supply invoices falsely declaring that the caviar sold by Beluga Caviar was CITES approved and lawfully imported into the United States.

At the time of his arrest, Tsimbal was carrying in excess of \$10,000 in cash and two checks drawn from his account in Spain worth a total of \$26,000. Tsimbal also maintained safety deposit boxes in the United States and abroad in which he concealed cash proceeds from the smuggling scheme. In pleading guilty, the defendant admits that these amounts should be forfeited to the United States as the proceeds of smuggling.

Obstruction of Justice

During the course of the government’s investigation, the defendant was aware that employees and former employees of Beluga Caviar had been subpoenaed before a federal grand jury in Miami.

One employee was called to testify before the grand jury on two separate occasions in April 2001. Before each appearance before the grand jury Tsimbal met with this employee and encouraged her to testify falsely by saying that she did not know anything and that she had not seen anything. In fact, Beluga Caviar was comprised of only several employees and a very small work-space. Employees, including this individual, regularly saw the couriers bring caviar to the business in suitcases. This employee also helped make travel and hotel accommodations for the couriers. However, after meeting with Tsimbal before each of her grand jury appearances, and after he suggested that she testify that she did not know any details about the unlawful activity of Beluga Caviar, this employee provided false testimony to the grand jury. Additionally, during the course of a different investigation of caviar smuggling in Maryland, the defendant responded to a grand jury subpoena issued to Beluga Caviar for records relating to all caviar imports since April 1, 1998. His response was false and incomplete in that it failed to include any responsive records that would have disclosed the smuggling charged in the Indictment.

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This Joint Factual Statement, the accompanying plea agreement, and the Indictment have been translated into Russian for me by a court approved interpreter. I have carefully reviewed every part of each document with my attorney. I understand them and I voluntarily agree that they comprise a fair and accurate presentation of the facts.

Date

Viktor Tsimbal

I am the attorney for the defendant, Viktor Tsimbal. At my direction and in my presence,

this Joint Factual Statement has been translated into Russian for Mr. Tsimbal by a court approved interpreter. I have carefully reviewed every aspect of this document with my client.

Date

Orlando do Campo, Esquire
Attorney for the Defendant